WP(C) 5027/2000

BEFORE

THE HON'BLE MR. JUSTICE B.P. KATAKEY

By this writ petition, the petitioner has prayed (i) for a direction to the respondents to pay two advance increments for obtaining the Phd degree in terms of Clause 4.4.0 of the Gauhati University Ordinance; (ii) Challenging the decision of the Statutory Selection Committee of the Gauhati University held on 17.02.1993 and 27.04.1994 whereby, the petitioner was not found fit for promotion to the post of reader (Personal Promotion) and thereby denying the personal promotion in terms of Personal Promotion Policy of the Gauhati University as well as the various orders passed by the Chancellor in appeal as well as in review petition rejecting the claim for such personal promotion; and (iii) challenging the notice of retirement dated 12.11.1999 issued by the Register of Gauhati University intimating the petitioner that he will retire from service on attaining the age of superannuation on 31.10.1999 and for a direction to the respondent authorities to allow him to continue in service till 31.08.2002 on the basis of the declaration of age in a civil suit being Title Suit No.75/1966.

2. I have heard Mr. Kalita, the learned Sr. counsel for the petitioner and Mr. L.P. Sharma, the learned Standing counsel, Gauhati University appearing on behalf of the respondent Nos.1, 2, 3 and 5. None appears for other respondents.

3. Mr. Kalita, the learned Sr. counsel for the petitioner at the outset, has submitted that the petitioner does not want to press the third prayer as mentioned above relating to the notice of retirement as well as for allowing him to continue as Lecturer in University Law College under Gauhati University till 31.08.2002 and has submitted that the petitioner shall confine himself only to the prayers made in serial No.(i) and (ii) above. In view of the above, the prayer made in serial No.(iii) above stands rejected as not pressed.

4. Mr. Kalita, the learned counsel in support of the first prayer relating to the claim of the petitioner for two advance increments for obtaining Phd Degree has submitted that under the Ordinance on Recruitment, Service Conditions, Work Load and Leave Rules for Professors, Principals, Readers, Lecturers and other Officers of Gauhati University, (in short, Gauhati University Ordinance) which is applicable to the petitioner also, he is entitled to two advance increments in terms of Clause 4.4.0 of the said Ordinance, which provides that a teacher will be eligible for two advance increments as an when she/he acquires a Phd Degree in her/his service career. According to the learned counsel though the petitioner has obtained the Phd Degree on 20.02.1990, the advance increments due and payable to the petitioner has not been paid by the University Authority.

5. Mr. Kalita relating to the prayer No.(ii) of the writ petition has submitted that 1978 Circular issued by the University Authority lays down the Scheme for Personal Promotion of the teacher of outstanding ability. According to the learned counsel, Clause 4 of the said Scheme requires scrutiny of the application received from intending teachers for promotion under the said Scheme by a panel of three experts to be nominated by the Vice Chancellor, from out of the panel recommended by the academic council for assessment and once such assessment is made by the experts, there is no question of making another assessment by the Statutory Selection Committee for the purpose of ascertaining the suitability for getting such personal promotion under the said Scheme. According to the learned counsel, the petitioner having been recommended by the committee of experts constituted by the Vice Chancellor for promotion under the Personal Promotion Scheme, the Statutory Selection Committee cannot refuse or reject his claim for personal promotion by making another assessment over and above the assessment made by the said committee of experts. The learned counsel, therefore, submits that the proceeding of the Statutory Selection Committee held on 17.02.1993 and 27.04.1994, whereby the petitioner was not found fit for promotion to the post of

Reader under the Personal Promotion Scheme and also the subsequent orders passed by the Chancellor in appeal as well as in review petition require to be interfered with.

6. Mr. Sarma, the learned counsel appearing on behalf of the University Authority, relating to the first prayer made in the writ petition, i.e. claiming payment of two advance increments, has submitted that the petitioner under Clause 4.4.0 of the Gauhati University Ordinance is entitled to two advance increments from the date when he obtained the Phd Degree, i.e. from 20.02.1990. According to the learned counsel, the said amount has already been paid. The learned counsel, however, could not produce any proof to demonstrate that such amount due and payable to the petitioner as advance increments have been paid.

7. Mr. Sarma, however, contesting the claim of the petitioner relating to the personal promotion has submitted that the petitioner is claiming the benefit under the 1978 Scheme for personal promotion. According to the learned counsel, the said Scheme provides that as soon as any application is filed by any teacher for promotion under the Scheme, the same is required to be sent to a committee consisting of three experts and if at least two experts recommend the application for personal promotion, the same is required to be placed before the Statutory Selection Committee as soon as possible. Such Statutory Selection Committee, according to the learned counsel, was duly constituted as required under the Gauhati University Act, 1947 and such Selection Committee having scrutinized entire records found the petitioner unfit. It has further been submitted that in fact the case of the petitioner for personal promotion under the Scheme was consider by such Selection Committee twice, once on 17.02.1993 and other on 27.04.1994 and on both the occasions the petitioner was not found suitable for promotion under the Scheme and hence he was not promoted under the said Scheme. Mr. Sarma has further submitted that the contention of the petitioner that there cannot be any further assessment by the Statutory Selection Committee cannot be accepted as the petitioner claims benefit under the Scheme which requires assessment by the Statutory Selection Committee and also as the petitioner has not challenged the legality and validity of such Scheme. Mr. Sarma referring to Section 15 (A) of the Gauhati University Act, 1947 has further submitted that it requires assessment/selection by a Statutory Selection Committee for making any promotion. It has further been submitted by the learned counsel, that the petitioner has not challenged the proceeding of the Selection Committee held on 17.02.1993 and 27.04.1994 on any ground apart from the ground that no further assessment is required by such Selection Committee once the expert body recommends the application of the applicant. The learned counsel, therefore, submits that the petitioner is not entitled to any relief in that respect.

8. There is no dispute relating to the claim of the petitioner that he obtained the Phd Degree on 20.02.1990. Clause 4.0.0 of the Gauhati University Ordinance provides for giving incentives for obtain Phd/M Phil Degree. Clause 4.4.0 provides that a teacher will be eligible for two advance increments as and when he/she acquires Phd Degree in her/his service career. According to the petitioner though he obtained the Phd Degree on 20.02.1990, the advance increments to which he is entitled to has not been given to him. As discussed above, the learned counsel for the Gauhati University while conceding the entitlement of the petitioner to get two advance increments has however, submitted that the amount payable in respect of such increments has already been paid. The learned counsel for the University authority, however, could not produce any documentary proof to show that such amount has been paid.

9. In view of the aforesaid discussion, the University Authority is directed to release the benefit payable to the petitioner relating to two advance increments. Such amount, if has not already been paid, shall be release within a period of two months from today.

10. The petitioner's further claim in the writ petition is promotion to the post of Reader in terms of the Personal Promotion Scheme, 1978. The petitioner claims such benefit under the said Scheme, which has been annexed as Annexure-G to the writ petition.

11. It appears from Clause 4 of Personal Promotion Scheme, under which the petitioner claims his right that when a teacher who is eligible for claiming such promotion files any application, the same is required to be sent to three experts to be nominated by the Vice Chancellor from out of a penal recommended by an academic council for assessment. If at least two experts recommend the application for personal promotion, the case of such teacher is required to be place before the Statutory Selection Committee as soon as possible. It also provides that in the event, a candidate who has been recommended by at least two experts once, but has not finally been selected by the Selection Committee, such candidates may offer himself for assessment again and in that case his case has to be considered by such Selection Committee for the purpose of promotion, without being sent to the expert for fresh assessment.

12. The petitioner having claimed the benefit of personal promotion under the Scheme and also having not challenged the conditions stipulated therein, is bound by the conditions incorporated in such Scheme. In the present case, there is no dispute on the fact that the petitioner applied for personal promotion under the Scheme, which was initially forwarded to the Committee consisting of three experts and recommended by two experts for personal promotion. The petitioner was, thereafter, called to appear before the Statutory Selection Committee constituted under Section 15 (A) of the Gauhati University Act, 1947, which requires constitution of Selection Committee for the purpose of making recommendation to the Executive Council for appointment as Professor, Readers, Lecturers etc. The petitioner accordingly appeared before the Selection Committee on 17.02.1993 but the said Committee did not recommend the name of the petitioner for promotion. The petitioner having applied again for promotion under the said Scheme he was again called to appear before the Selection Committee for the purpose of considering his case for promotion to Reader and accordingly the petitioner appeared before the Selection Committee on 27.04.1994, which Committee also did not recommend the name of the petitioner for promotion. The University Authority did not sent the second application filed by the petitioner to the Committee of three experts, as the same is not required to be done under Clause 4 of the said Scheme. The petitioner, in the present writ petition has not challenged the said Scheme of Personal Promotion, 1978. That apart for the purpose of appointment to a post of Professor, Reader, and Lecturer the selection by a Statutory Selection Committee constituted under Section 15 (A) of the Act is the requirement under the Gauhati University Act. Hence the contention of the petitioner that no further assessment by the Statutory Selection Committee is required once his name is recommended by at least by two experts in terms of Clause 4 of the 1978 Scheme of personal promotion cannot be accepted and hence rejected.

13. In view of the aforesaid discussion, the writ petition is therefore, allowed to the extent indicated above.

14. No cost.